



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: **VICTORIA P. SIMMONS**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **PAIGE S. FITZGERALD**
Assistant Attorney General

DATE: **May 2, 2003**

SUBJECT: **Emergency Regulations concerning Methods of Providing
Transportation**

I have reviewed the attached emergency regulations that adds “stretcher vans” as a method of providing non-emergency transportation.

Based on that review, it is this Office’s view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that an “emergency situation” includes “a situation in which Virginia statutory law or the appropriation act . . . requires that a regulation be effective in 280 days or less from its enactment” This regulation will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2003 Appropriation Act (Item 322 I) which requires DMAS to “amend the State Plan for Medical Assistance to add ‘stretcher vans’ as a mode of non-emergency medical transportation. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.”

This situation qualifies as an emergency as provided in § 2.2-4011(A)(ii) because the Appropriation Act requires these regulations to be effective within 280 days of enactment of this provision. Without emergency regulations, the Department would be unable to meet the time frame established by the General Assembly for

adding this new service. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action. In addition, the regulations shall be effective for no more than twelve months. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. The replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment